

## Briefing on the Presidential Records Act (PRA)

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### NARA Attendees

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### Incumbent PRA Issues and Assistance

#### Records Management

*Incumbent President/Counsel solely responsible for managing Presidential records; NARA's role is purely advisory, with the exception of the disposal of incumbent Presidential records.*

- Major focus on Presidential electronic records and new media used by the White House Office that creates Presidential records
  - 2014 Amendments to the PRA – 20 Day Rule for Electronic Messages
- Institutional knowledge on past White House practices and issues
  - Establish Ongoing Archiving System
- Determining records status of commissions
- NARA's more formal role over federal records within the EOP: OMB, OSTP, USTR, CEQ, and ONDCP
  - Need new disposition schedules for FRA email

#### Disposal of Presidential/Vice Presidential records

*In consultation with the Archivist, the incumbent President can seek to dispose of records that do not sufficiently document the constitutional, statutory, official, or ceremonial duties of the incumbent President*

- Requirements for disposal of incumbent Presidential records
- Implementation of disposal agreements, including for "bulk mail" in all formats and certain categories of electronic records

#### Courtesy Storage and Transfer of Incumbent Presidential Records

*NARA provides courtesy storage for Presidential and Vice Presidential records and gifts and artifacts intended to be placed in the future Obama Presidential Library*

- 24/7, one-hour turn-around time for all recalls of records and gifts
- Coordinates courtesy storage with White House Office of Records Management, National Security Council's Records Management staff, the White House Communications Agency, and the White House Gift Office.
- 2014 Amendment re President having exclusive control – 44 U.S.C. 2203(f)

#### NARA Detailees

*NARA funds the Presidential Diarist, who is on detail from the Presidential Materials Division. The agency also provides two members of the National Security Staff's Access Management staff.*

## **Issues and Assistance involving PRA records in NARA's legal custody\***

### **Public Release of Presidential records**

*Per the PRA, the incumbent President has an opportunity to conduct a privilege review of all Presidential records prior to release.*

- Normally 60 working days, plus one 30 day extension
  - Initial six months for new Administration
- Potential notification waivers

### **Access to records not yet publicly available (Special Access Requests)**

*Under the PRA, the incumbent President, Congress, and the Courts can request access to Presidential records*

- Special access requests by incumbent President or other Executive Branch agency must be cleared by White House Counsel before NARA can respond
  - The White House Counsel's Office has authorized the NSC and the President's Intelligence Advisory Board to request records directly from NARA
- Congressional and Judicial special access requests for former PRA records
- Notice goes to a living former President and to White House Counsel and AG/OLC
- Right of the former Presidents to access their papers

And asking the incumbent to waive their privilege review of the stuff that Bush and Obama did – pre Reagan NSC, most of Reagan, Bush 41, and Bush VP

## **Other issues**

### **Assertion of PRA Restrictions and Designation of PRA Representatives**

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\* NARA's PRA regulations, at 36 C.F.R. Part 1270, are in the process of being updated in light of the 2014 amendments. The notice of proposed rulemaking was published on December 28, 2017; no comments were received, so it is ready for final publication.